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Presentation Objectives

- HIPAA update
- County and Tribe obligations as DHFS Business Associates
 - Home and Community Based Waivers
 - Wisconsin Well Woman Program
- The Model Contract and HIPAA

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HIPAA Update: The Great Train Wreck

Not everyone will be ready for October 16

- Some health plans not ready
- Many providers drop to paper
- Health plans can't handle paper volume
- Payments delayed
- A sign: partner testing is lagging

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HIPAA Update: The Great Train Wreck

Contingencies

- Health plans staffing for paper volume?
- Health plans accepting current formats awhile?
- Providers establishing lines of credit?

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Federal Enforcement

- Interim Final Rule
- Guidance on Transaction Rule Enforcement
 - Complaint-driven
 - Voluntary compliance
 - Good faith policy
 - Cure period
 - Reasonable and diligent efforts
 - Increased external testing
 - Partner non-cooperation
 - Health plan outreach
 - Compliance Action Plans

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Future Rules

| Rule | Date |
|--|---------------|
| Implement National Employer ID (FEIN) | July 30, 2004 |
| Final National Provider ID Rule | Fall, 2003 |
| Claims Attachments Draft Rule | January, 2004 |
| Draft National Health Plan ID Rule | Fall, 2003 |
| Draft Electronic Medicare Claims Submission Rule | Fall, 2003 |
| Draft First Report of Injury Rule | CY 2004 |
| Electronic Medical Record ?? | Someday?? |

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Billing Medicare: Small Providers

- **Provider of services**
 - institutional or special purpose
 - hospitals, skilled nursing facilities, outpatient rehab, home health, etc
 - bill Medicare fiscal intermediaries (UGS)
 - bill mostly Medicare Part A
 - less than 25 FTE

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Billing Medicare: Small Providers

- Physician, practitioner, facility, or supplier
 - bill Medicare carriers (WPS)
 - bill Medicare Part B
 - less than 10 FTE

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HIPAA COW Fall Conference

- Keynote by Dr HIPAA (Bill Braithwaite)
- Security, EDI, Privacy
- September 26
- Heidel House, Green Lake
- \$100 by Sept 12, \$125 after
- www.hipaacow.org

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County and Tribe obligations as DHFS Business Associates

- HCBW
 - Standard electronic transactions (October 16, 2003)
 - Privacy (now)
 - Security (April 2005)
- WWWP (April 2004)
 - Privacy
 - Security

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County and Tribe obligations as DHFS Business Associates

12.04 BUSINESS ASSOCIATE AGREEMENT

As required under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA")

This Agreement ("Agreement") amends and is hereby incorporated into the existing agreement known as 2003 State and County Contract covering Social Services and Community Programs "Agreement", entered into by and between County Board of Supervisors of _____ (County Name) County herein after referred to as "County" and Department of Health and Family Services, and the State of Wisconsin herein referred to as "Department" on _____ (Date).

This Agreement is specific to those Social Services and Community Programs included in the Agreement where it has been concluded that the County is performing specific functions on behalf of Department programs that have been determined to be a Health Plan and covered by the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"). These programs currently include the following:

- (i) Brain Injury Waiver,
 - (ii) Community Integration Program (CIP IA),
 - (iii) Community Integration Program (CIP IB),
- *****

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Standard Electronic Transactions

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When must counties comply with the HIPAA transactions rule?

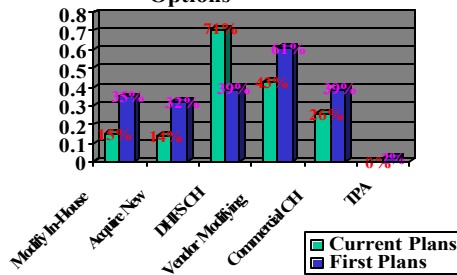
- As covered providers (**often**)
electronically bill a health plan for health care services
- As a county health plan (**seldom**)
pay for health care and do not meet the exceptions for government-funded programs (e.g., General Relief Medical)
- As a business associate of DHFS in administering the Medicaid Waiver programs (**always**)
conducting transactions of a health plan on DHFS' behalf

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County HCBW Transactions Compliance Options



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County HCBW Transaction Rule Compliance

- 6 Using (enrolling in) DHFS Clearinghouse
- 46 Committed to DHFS Clearinghouse
- 27 surveyed providers and no intent
- Most used vendors
 - DRI (~10)
 - CMHC (~8)
 - CHAMP (~5)
 - TCM/Biztalk (~5)
 - GIT (~4)

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Likely order of Waiver provider demand for standard transactions

- Claims (837)
- (Payment &) Remittance (835)
- Claims status inquiry and response (276 and 277)
- Eligibility inquiry and response (270 and 271)
- Request for and Approval of authorization (278)

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Required Transactions

| Standard Transaction | Business Activity | Must do Standard Transaction? |
|----------------------|----------------------------------|---|
| 837 | Receive a claim | Yes |
| 835 | Send payment remittance advice | Yes |
| 835 | Send electronic funds transfer | No |
| 270/271 | Eligibility inquiry and response | Not if not normally done in HCBW programs |
| 276/277 | Claims status inquiries | Yes |
| 278 | Authorizations | Yes |

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County Transaction Rule Compliance

- Survey providers
- Report findings to DHFS by October 1
- Participate in DHFS Clearinghouse teleconferences
- Sign up for DHFS Clearinghouse
- Issue Trading Partner Agreements and Companion Documents
- Test transactions "round trip"

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Privacy

- Notice of Privacy Practices
- Use and Disclosure
- Access and Amend PHI
- Disclosure Accounting
- Subcontractors and Agents

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Notice of Privacy Practices

- As DHFS business associates in HCBW and WWWP
 - DHFS distributes Notice
- As health plans* (CMOs, General Relief Medical)
 - Distribute own Notice & post on Internet
- As health care providers billing electronically
 - Distribute own Notice, post physically & on Internet
 - Reasonable attempt to obtain receipt acknowledgement

*Small plan by April 2004

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Access and Amend PHI

- Designated Record Set
 - records maintained by or for a health plan
 - enrollment, payment, claims adjudication, case or medical management record systems
 - used by the covered entity [or BA] to make decisions about individuals
- Counties maintain the Designated Record Set for HCBW
- HRSR
 - contains PHI
 - is a reporting system
 - not part of the Designated Record Set

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Local Responsibilities for Access and Amendment Requests

- Define **your** Designated Record Sets for HCBW
 - document locally
 - do not report to DHFS
 - e.g. fiscal and case records; Individual Service Plan; Assessments; Health Form; Functional Screen; Variance Requests
- Document who receives and processes requests
 - report to DHFS
- Respond to access and amendment requests
 - According to §164.524 and §164.526
 - Acting as the covered entity

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Use and Disclosure of PHI

- per Business Associate Agreement,
- according to law, or
- as authorized in writing by DHFS
- for administration of HCBW and WWWP and provision of services within
- if permitted of DHFS by privacy rule
- for data aggregation for DHFS program operations
- for County's management, administration or legal responsibilities

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Misuse and Unauthorized Disclosures

- Report to DHFS
 - initially within one day
 - written upon request
 - specified content
- Commitment to Mitigate

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Tracking Disclosures

- **Disclosure** means the release, transfer, provision of access to, or divulging in any other manner of [protected health] information **outside the entity** holding the information
- Record each disclosure
- Retain 6 years
- Report to DHFS in 5 days upon request
- Provide accounting to individual

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Tracking and Accounting Exceptions

- **authorized by DHFS** in the BAA or other writing
- DHFS Treatment, Payment or Operations (**TPO**)
- **authorized by the individual** or personal rep
- to persons **involved in** individual's health **care or payment**
- **disaster relief** notification
- **national security** or intelligence
- law enforcement or correctional institutions for **inmates**

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Repetitive Disclosures

- IF
 - to same person or organization
 - for same purpose
- Information provided
 - from first instance
 - about frequency and periodicity
 - date of last instance

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Subcontractors and Agents with PHI

- For county operations
 - if permitted or required by law or
 - with written contract
- Otherwise, if ensure:
 - hold PHI in confidence
 - use or further disclose only for purpose for which county disclosed or as required by law
 - notify County of breach
 - comply with same restrictions and conditions that apply to County

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Security

- Preserve for electronic PHI
 - confidentiality
 - integrity
 - availability
- Take appropriate security measures
 - administrative
 - technical
 - physical

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Security

- Document
- Keep current
- Available for inspection
- Consistent with HIPAA security regulations

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HIPAA Security

- April 2005 (2006)
- Standards and implementation specifications
 - administrative
 - technical
 - physical

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HIPAA Security: Risk Management

- Identify vulnerabilities
- Determine risk
 - Severity
 - Likelihood
- Analyze alternatives
- Select alternative (reasonable & appropriate)
- Implement alternative to mitigate risk
- Repeat periodically

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HIPAA Security: Key Issues

- Secure email
- Access control for minimum necessary
- Access auditing
- Backup, recovery, business continuity

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Secure email

- Standards based
- Integration with email systems
- Trust at organization level
- Multiple vendors
- Consortium of users

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Model Purchase of Service Contract

- Mostly for human services/treatment
- HIPAA applicability
 - Electronic billing of health care services
 - Purchase of administrative services using PHI
 - As a provider or health plan
 - As DHFS Business Associate

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Model Purchase of Service Contract

- Include Section 9.1 always
- General protection
- Requires compliance with HIPAA whenever applicable

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Model Purchase of Service Contract

- Section 9.4 requires provider to conduct any standard electronic transactions according to HIPAA
- Use when provider may bill electronically for health care services to covered program
 - HCBW
 - County health plan
- Attach Trading Partner Agreement & Companion Guide

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Trading Partner Agreement

- Governs terms of conducting standard transactions
- Requires of the Partner
 - No deviance from standards
 - Commitment to testing
 - Commitment to correcting deficiencies
 - Privacy and Security rule compliance

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Companion Guide

- Complements the HIPAA Implementation Guides
- Explains how to conduct the standard transactions
- Contains
 - Connectivity Instructions
 - Payer Specific Requirements
 - Data clarifications
 - 997 Acknowledgements
 - Frequently Asked Questions

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Model Purchase of Service Contract

- Include Section 9.2 when county or tribe:
 - is a covered health plan or provider
 - is purchasing administrative services using PHI
- 9.2 requires provider to sign a Business Associate Agreement

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Model Purchase of Service Contract

- Include Section 9.3 when the county or tribe is a Business Associate AND
- Purchased services:
 - are administrative (not treatment)
 - are on behalf of purchaser in fulfilling Business Associate responsibilities
 - use PHI
- 9.3 requires provider to comply with essentially same HIPAA requirements as BA must
- Include Agreement on Provider Use of PHI

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